

# Calendar No. 1025

91ST CONGRESS }  
2d Session }

SENATE

} REPORT  
No. 91-1021

## RUTH E. CALVERT

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JULY 15, 1970.—Ordered to be printed

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Mr. BURDICK, from the Committee on the Judiciary,  
submitted the following

## REPORT

[To accompany S. 3138]

The Committee on the Judiciary, to which was referred the bill (S. 3138) for the relief of Ruth E. Calvert, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE

The purpose of the proposed legislation is to direct the Administrator of Veterans' Affairs to pay \$1,600 to Ruth E. Calvert, of Stirling, N.J., representing the amount of an allowance toward the purchase price of a specially equipped automobile that the Veterans' Administration erroneously authorized for her late husband, Ben Sassin Calvert, the payment of which was disallowed after the veteran had purchased the automobile.

### STATEMENT

In its favorable report on the bill, the Veterans' Administration set forth the facts of the case as follows:

Ben Sassin Calvert (XC-8666773) served honorably in the U.S. Armed Forces from September 7, 1940 through August 20, 1945, and from August 20, 1946, through November 30, 1961. In a rating decision of July 23, 1964, the Veterans' Administration established peacetime service-connection for Mr. Calvert's condition of metastatic carcinoma

which, it was determined, had its inception in 1961. He was accordingly awarded disability compensation for total disability. A subsequent rating of March 23, 1967, found him entitled to a higher statutory rate of compensation on account of the loss of use of both lower extremities at a level preventing natural knee action with prostheses in place, effective from August 4, 1966.

In May 1967, Mr. Calvert filed an application for an award of monetary assistance toward the purchase of an automobile. The law (38 U.S.C. 1901, et seq.) authorizes monetary assistance, not to exceed \$1,600, to veterans who incurred the loss or permanent loss of use of one or both feet (among other specified losses) from disability incurred in or aggravated by World War II or Korean conflict service. The benefit is also payable where the disability was incurred in or aggravated by service after January 31, 1955 and where "the injury was incurred or the disease was contracted in line of duty as the direct result of the performance of military duty." Mr. Calvert was not entitled to this benefit since his disability, stemming from service after January 31, 1955, was not incurred as the "direct result of the performance of military duty." However, through error, Mr. Calvert was certified as entitled to the benefit. Before the error was discovered and the veteran notified, he had contracted for the purchase of an automobile, had taken delivery of the new car, and had surrendered his old car which had been resold. The veteran filed an appeal from the decision denying him the \$1,600 allowance. The Board of Veterans' Appeals, in its decision of March 28, 1968, denied the appeal holding that the veteran did not meet the criteria of law governing the grant of assistance on the purchase price of an automobile.

Following the veteran's death, Mrs. Calvert satisfied the contractual obligation by paying the \$1,600 due on the automobile. She requested that she be afforded relief by the Veterans' Administration under 38 U.S.C. 210(c) (2). That statutory provision authorizes the Administrator to grant equitable relief where benefits "have not been provided by reason of administrative error on the part of the Federal Government or any of its employees." This request was denied by letter of November 1, 1968. While recognizing that the Veterans' Administration had made an error in the case in issuing a certificate of eligibility to the veteran, the letter pointed out that the reason the benefits in question had not been provided was not because of that error but because Mr. Calvert did not have basic eligibility for the monetary assistance. Hence, the case did not come within the scope of 38 U.S.C. 210(c) (2) and the relief requested by Mrs. Calvert could not be granted.

It is obvious that Mr. Calvert quite properly acted under the semblance of authority provided by the erroneous certificate of eligibility and was misled by it to his, and Mrs. Calvert's, detriment. In view of the nature of the disease from which he was suffering, it is quite reasonable to assume that

if he had been aware of his nonentitlement to the \$1,600 allowance he would not have contracted for the purchase of a new automobile with special controls and relinquished his old automobile.

Accordingly, while we generally do not favor the enactment of private relief legislation, in view of the facts and equities in this case, we recommend the favorable consideration of S. 3138 by your committee.

The committee, after a review of the foregoing, believes that the bill is meritorious and recommends favorable consideration of S. 3138, without amendment.

Attached hereto and made a part hereof is a letter from the Veterans' Administration, dated March 19, 1970.

VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,  
*Washington, D.C., March 19, 1970.*

HON. JAMES O. EASTLAND,  
*Chairman, Committee on the Judiciary, U.S. Senate,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further response to your request for a report by the Veterans' Administration on S. 3138, 91st Congress. A bill for the relief of Ruth E. Calvert.

The bill, if enacted, would direct the Administrator of Veterans Affairs to pay \$1,600 to Ruth E. Calvert, Stirling, N.J., representing the amount of an allowance toward the purchase price of a specially equipped automobile that the Veterans' Administration erroneously authorized for her late husband, Ben Sassin Calvert, the payment of which was disallowed after the veteran had purchased the automobile.

Ben Sassin Calvert (XC-8666773) served honorably in the U.S. Armed Forces from September 7, 1940, through August 20, 1945, and from August 20, 1946, through November 30, 1961. In a rating decision of July 23, 1964, the Veterans' Administration established peacetime service-connection for Mr. Calvert's condition of metastatic carcinoma which, it was determined, had its inception in 1961. He was accordingly awarded disability compensation for total disability. A subsequent rating of March 23, 1967, found him entitled to a higher statutory rate of compensation on account of the loss of use of both lower extremities at a level preventing natural knee action with prostheses in place, effective from August 4, 1966.

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1955, was not incurred as the "direct result of the performance of military duty." However, through error, Mr. Calvert was certified as entitled to the benefit. Before the error was discovered and the veteran notified, he had contracted for the purchase of an automobile, had taken delivery of the new car, and had surrendered his old car which had been resold. The veteran filed an appeal from the decision denying him the \$1,600 allowance. The Board of Veterans' Appeals, in its decision of March 28, 1968, denied the appeal holding that the veteran did not meet the criteria of law governing the grant of assistance on the purchase price of an automobile.

Following the veteran's death, Mrs. Calvert satisfied the contractual obligation by paying the \$1,600 due on the automobile. She requested that she be afforded relief by the Veterans' Administration under 38 U.S.C. 210(c) (2). That statutory provision authorizes the Administrator to grant equitable relief where benefits "have not been provided by reason of administrative error on the part of the Federal Government or any of its employees." This request was denied by letter of November 1, 1968. While recognizing that the Veterans' Administration had made an error in the case in issuing a certificate of eligibility to the veteran, the letter pointed out that the reason the benefits in question had not been provided was not because of that error but because Mr. Calvert did not have basic eligibility for the monetary assistance. Hence, the case did not come within the scope of 38 U.S.C. 210(c) (2) and the relief requested by Mrs. Calvert could not be granted.

It is obvious that Mr. Calvert quite properly acted under the semblance of authority provided by the erroneous certificate of eligibility and was misled by it to his, and Mrs. Calvert's, detriment. In view of the nature of the disease from which he was suffering, it is quite reasonable to assume that if he had been aware of his nonentitlement to the \$1,600 allowance he would not have contracted for the purchase of a new automobile with special controls and relinquished his old automobile.

Accordingly, while we generally do not favor the enactment of private relief legislation, in view of the facts and equities in this case, we recommend the favorable consideration of S. 3138 by your committee.

Advice has been received from the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON,  
*Administrator.*

